

07 OCT 2003



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Dr. Vitam Kodelja
Birkbuschstrasse 14
Berlin 12167
GERMANY

In re Application of KUHNE et al
U.S. Application No.: 10/049,658
Int. Application No.: PCT/US00/22610
Int. Filing Date: 18 August 2000
Priority Date: 18 August 1999
For: CHEMICALLY-STABILIZED CHLORITE
SOLUTIONS FOR TREATING CANCER
AND OTHER DISEASES

Dear Dr. Kodelja:

You are named as a joint inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

A handwritten signature in black ink, appearing to read "Bryan Tung".

Bryan Tung
PCT Legal Examiner
PCT Legal Office
Telephone: 703-308-6614
Facsimile: 703-308-6459

Heller Ehrman White & McAuliffe, LLP
Intellectual Property Department
1666 K Street, N.W., Suite 300
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Attorney Docket No.: 25708.0038



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DECISION ON PETITION

UNDER 37 CFR 1.47(a)

This is in response to applicant's "Renewed Petition Under 37 C.F.R. 1.47(a)" filed 17 September 2003.

BACKGROUND

On 18 August 2000, applicant filed international application PCT/US00/22610, which claimed priority of an earlier United States application filed 18 August 1999. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 18 February 2002.

On 15 February 2002, applicant filed national stage papers with the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 17 April 2002, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 18 November 2002, applicant filed a petition under 37 CFR 1.47(a).

On 25 November 2002, the DO/EO/US mailed a Notice of Abandonment.

On 18 March 2003, this Office mailed a decision dismissing the 18 November 2002 petition and vacating the 25 November 2002 Notice of Abandonment.

On 17 September 2003, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Applicant has previously satisfied items (3) and (4) above.

With regard to item (1) above, applicant has submitted the required declaration.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

In the present case, petitioner has adequately demonstrated that a bona fide attempt was made to present a copy of the complete application papers (including specification, claims, drawings, and oath/declaration) to the nonsigning inventor Vitam Kodelja for signature. Specifically, application papers were delivered to Dr. Kodelja on 08 May 2003 (see affidavit of Paul Booth, ¶5). Furthermore, petitioner has sufficiently established that Dr. Kodelja refuses to sign the application papers. Specifically, Dr. Kodelja did not respond to the delivered letter within the time period set therein. Therefore, it can be concluded with reasonable certainty that Dr. Kodelja refuses to join in the application.

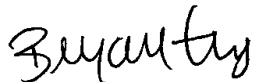
CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is GRANTED.

This application has an international filing date of 18 August 2000 and a date under 35 U.S.C. 371(c) of 17 September 2003.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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